

APPEAL NO. 030535
FILED MARCH 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 5, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant failed to timely "notify his employer of the alleged injury" pursuant to Section 409.001; and that the claimant did not have disability.

The claimant appeals, asserting that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Reversed and rendered in part and affirmed in part.

At the outset we acknowledge that the hearing officer is the sole judge of the weight and credibility that is to be given to the evidence. (Section 410.165(a)). That said we base our reversal on the undisputed evidence and the hearing officer's findings.

It is undisputed that the claimant was a truck driver driving a tractor-trailer or an "18-wheeler" when on _____, he was involved in a motor vehicle accident, which totaled the tractor the claimant was driving and a parked car and damaged the trailer. The cause of the accident is in dispute but relatively immaterial to the issues before us. The claimant testified that he was "stiff and sore" after the accident. The hearing officer recites that the claimant said that he was "tense and tight" and one of the employer's supervisor's came to the scene of the accident and said that the claimant said he was "shook up." After examining the accident scene, the supervisor, after stopping at the employer's premises, took the claimant to "a minor emergency clinic" for a drug test and to assess the claimant's injuries. The uncontroverted testimony was that the doctor told the claimant that "the stiffness and soreness from the accident should go away in a few days." The supervisor then took the claimant back to the employer's terminal where some forms were filled out, including an "Injury/Accident Call -In Information" form and the carrier was notified of the accident and assigned a "Claim I.D. No." The claimant's employment was later terminated on _____. The claimant subsequently went to his own doctor at a clinic (a Work Status Report (TWCC-73) dated May 24, 2001, is in evidence). The claimant was released to return to work and did return to work on July 5, 2001.

The hearing officer found the claimant "was shaken in a wreck" and in his recitation of the evidence comments "a report of being shook up or stiff after an accident is insufficient to place the employer on notice that the employee is alleging an injury."

The hearing officer also found that the “claimant had maintained to the employer that he was stiff, sore, and shaken up by the accident.”

Injury is defined in Section 401.011(26) as damage or harm to the physical structure of the body. We are unwilling to hold that soreness and stiffness or being “shaken up” do not constitute an injury. Likewise, the undisputed evidence, and the hearing officer’s findings, clearly indicate that the employee’s supervisor was called to the scene; clearly had knowledge of the accident that totaled two vehicles; that the claimant “maintained to the employer that he was stiff, sore, and shaken up,” and that the supervisor took the claimant to a doctor. Whether the supervisor was present during the doctor’s examination is in dispute but the fact that the claimant was taken back to the employer’s terminal and the accident was reported to the carrier is not in dispute.

We reverse the hearing officer’s determinations that the claimant did not sustain a compensable injury on _____, and that the “claimant did not advise the employer of an alleged work related injury of _____,” as being against the great weight and preponderance of the evidence. We render a new decision that the claimant sustained a compensable injury in the form of soreness and stiffness on _____, and that the claimant timely notified his employer of his injury pursuant to Section 409.001.

The hearing officer also found that the claimant did not have disability because his unemployment was a “result of his termination by the employer but not as a result of the . . . injury of _____.” That determination is supported by the evidence as the hearing officer could clearly believe that fact. The hearing officer’s determination on this issue is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, we reverse the hearing officer’s determinations on the injury and notice issues and render a new decision that the claimant did sustain a compensable injury in the form of soreness and stiffness and that the claimant gave timely notice of his injury to the employer pursuant to Section 409.001. We affirm the hearing officer’s determination on the disability issue.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge